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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1980

JOHN C. WEAVER, JR., M.D. and
BMA OF OAKLAND, INC.,
Petitioners,

vs.

BRENDA MARIE PAYTON,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

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QUESTION PRESENTED FOR REVIEW

I. In the absence of any statutory authority, can a state court compel a private physician and dialysis unit, against their will and against their best medical judgment, to render medical services to an individual patient where:

(1) the patient has voluntary, alternative means for arranging for her medical care,

(2) there is no contractual relationship between the patient and either the physician or the dialysis unit,

(3) the patient does not require emergency treatment, but is seeking to compel chronic, ongoing, periodic medical treatment, and

(4) the patient poses a health hazard to herself and to her fellow patients because of her admitted drug abuse, her severe personality problems, and her dangerous and destructive behavior?

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BMA OF OAKLAND, INC.,
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VS.

BRENDA MARIE PAYTON,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

Petitioners John C. Weaver, Jr., M.D. and Biomedical Applications of Oakland, Inc. (BMA) respectfully pray that a Writ of Certiorari issue to review the order of the California Supreme Court entered in this proceeding on March 11, 1981, compelling Dr. Weaver and BMA to render involuntary medical services.

OPINIONS BELOW

The California Supreme Court entered and filed its order compelling Petitioners' involuntary services on March 11, 1981, without opinion and without publication. (Appendix A, *infra*) No extensions for the filing of this Petition have been sought. The California Supreme Court's order reversed an unpublished order of the California Court of Appeal, District One, Division One, granting supersedeas herein. (Appendix B, *infra*) In the Petition for Writ of Supersedeas, Petitioners sought relief from an unpublished post-judgment order of the Alameda County Superior Court, dated June 30, 1980 (Appendix C, *infra*), which compels Dr. Weaver and BMA to render medical services to a particular individual against their will, pending that individual's appeal of judgment in Petitioners' favor. (Appendix D, *infra*) That unpublished judgment was supported by Findings of Fact and Conclusions of Law which found that the individual seeking to compel services has no legal or equitable grounds for doing so. (Appendix E, *infra*)

JURISDICTION

The opinion of the California Supreme Court having been filed on March 11, 1981, there having been no petition for rehearing, gives rise to this timely Petition for Certiorari. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Dr. Weaver's and BMA's case rests squarely upon Section 1 of the Thirteenth Amendment which provides:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
> U.S. Const. amend. XIII.

Petitioners also rely on 42 U.S.C. §1994 as the federal statute enforcing the Thirteenth Amendment, declaring any action by the state compelling involuntary labor to be null and void. (Text in Appendix F, *infra*)

STATEMENT OF THE CASE

This is the first case to come before this Court testing a state's power to order an otherwise free person into the involuntary servitude of another individual since Dred Scott petitioned for his freedom in 1857. *Dred Scott* v. *Sandford*, 19 How. 393, 60 S.Ct. 691, 15 L.Ed. 691 (1857). Petitioner John C. Weaver, Jr., M.D., is a board-certified nephrologist in the private practice of medicine in Oakland, California. Those of his patients who suffer from renal failure, including respondent, receive dialysis[1] at an outpatient dialysis unit owned and

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1 Hemodialysis (or dialysis) is the medical treatment (continued)

operated by Petitioner BMA.[2]

A. A History of Petitioners' Attempt to Provide Care to a Totally Unmanageable and Disruptive Patient Whose Conduct Endangers the Health and Lives of Other Patients

For the past six years, Dr. Weaver and BMA have attempted to provide regular dialysis to respondent Brenda Payton. Ms. Payton admits to a 15-year history

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given to persons with kidney failure. In the dialysis process, the patient's circulatory system is connected to a special machine through which the blood is passed. Using salts and osmotic membranes, artificial kidneys in the machine drain excess liquids from the blood and cleanse the blood of its accumulated impurities and toxins. Since hemodialysis patients have no kidney function of their own, they must adhere to medically prescribed dietary restraints and limits on liquid intake. They must also follow a regular dialysis schedule, using the machine for a prescribed period of time at regular intervals to avoid the dangers of accumulating too much liquid and too many toxins in their blood. If, however, dialysis is administered regularly and if the patient cooperates with the regimen and therapy, dialysis can substitute for kidney function.

[2] BMA is a corporation which operates an outpatient dialysis unit in Oakland, California; it does not have the authority under California law to practice medicine. Cal. Bus. & Prof. Code section 2008 (West 1972). Nor do BMA's nurses and technicians have the professional training or skill to prescribe the complicated course of treatment for patients with renal failure. To use BMA's dialysis machines, a patient must be under the care of a physician to prescribe the exact treatment to be received based on the physician's assessment of the patient's condition.

of drug abuse and to emotional problems. Petitioners have nevertheless tried to render care in spite of Ms. Payton's complete failure to abide by the medical and dietary regimen necessary for dialysis, and despite her continuous antisocial conduct to her fellow patients, nurses, and physicians. She indulges in self-destructive behavior, lewdly exposes her genitals to other patients and staff in the dialysis unit, and verbally abuses those around her. Her behavior is so extreme that she requires almost one-to-one nursing, thereby depriving other patients of needed care. On countless occasions she has disturbed other patients and interfered with their care. These episodes have not taken place behind closed doors, but in an open room where 30 or more patients are being dialyzed at the same time.

Ms. Payton's failure to cooperate with the medical regimen necessary for dialysis treatment endangers her own health and jeopardizes care for others. For example, she admits to chronic barbiturate abuse. Barbiturates are normally metabolized and excreted by the kidneys, so the drugs she takes between dialysis sessions remain in her system until she is dialyzed again. Her drug abuse significantly complicates her medical problems. Barbiturates lower blood pressure, as does dialysis; the combination of the two can cause dramatic decreases in blood pressure, seizures and convulsions. In such fits, and at other times when intoxicated, she will disconnect the dialysis needle from her shunt, spewing blood onto the

dialysis unit floor, and contaminating the dialysis machine. Her seizures and drug-related emergencies make extraordinary demands on the BMA staff, and as a result, care for other patients must suffer.

Furthermore, Ms. Payton grossly abuses her diet and ignores necessary limitations on liquid intake. Since she has no kidney function, her failure to follow the dietary and liquid regimen is dangerous and requires extraordinary care.

Compounding this problem, Ms. Payton also misses, or is late for, nearly every dialysis treatment. Without dialysis at regular intervals for prescribed periods, it is virtually impossible for Petitioners to control the accumulation of fluids and toxins in Ms. Payton's system. Her erratic schedule is not only detrimental to her care, but it also delays and disrupts the treatment for the 31 other patients who are connected to the same central machine and scheduled to commence treatment at the same time. When this patient is late, nurses and technicians must divert their attention from the other patients to her, and delay treatment for the others. When she misses dialysis sessions altogether, the machinery which has been set up for her is not used, and medical supplies and staff time are wasted.

The combination of her disregard for the dialysis schedule and dietary and liquid regimen often leads to over-accumulation of fluid wastes in her system, making

it virtually impossible to maintain any semblance of regular, stable care. As a result she will appear at unscheduled and unpredictable times at the local emergency room demanding dialysis.[3] When her self-generated emergencies arise, Dr. Weaver is called by the emergency room, and frequently has to come to the hospital. In effect, therefore, Dr. Weaver is on 24-hour call to this patient, disrupting his medical practice, his care for his other patients, his home life and his freedom at large.

B. To Protect Other Patients, Dr. Weaver and BMA Lawfully Discharged Ms. Payton From Their Care

Because of Ms. Payton's persistent pattern of uncooperative and disruptive behavior from the outset of the patient-physician relationship, Dr. Weaver notified respondent by letter in December of 1978 that he would no longer serve as her physician. The doctor temporarily

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3 On one notable occasion she arrived at the emergency room having called an ambulance to provide her a ride (she was not in an emergency condition), demanding immediate dialysis—but not until she finished the hamburger and french fries she had brought with her for dinner. Lest this somewhat humorous picture be misleading, the uncontradicted testimony below was that the demanding and outrageous behavior of respondent disrupts the orderly operation of the emergency room and endangers other patients who are more critically ill or injured.

relented, however, and continued to care for her for a few months, until her outrageous behavior again caused him to notify her that the patient-physician relationship would not be maintained beyond April, 1979. Regular outpatient dialysis services in fact were terminated,[4] pursuant to this notice and no patient-physician relationship existed as of April 5, 1979.

C. Ms. Payton's Suit to Compel Services

Ms. Payton's response to the April, 1979, termination of services was to file a "Writ of Mandate" in state court purporting to compel Dr. Weaver and BMA to resume care. In the hope that her conduct might change for the better, Petitioners agreed to render temporary dialysis service *if* Ms. Payton were cooperative and not abusive. The stipulation imposed six express conditions on her behavior. The stipulation was to no avail. As the trial court later found, she wilfully and knowingly violated *each* of those conditions.[5]

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[4] Dr. Weaver has always rendered emergency renal care when necessary, and emergency care is not an issue in this case. The issue herein is the rendering of chronic ongoing care *in futura*. The trial court concluded that Ms. Payton "suffers from end stage kidney disease which in and of itself is not an emergency condition." (Appendix E, infra, p. 7)

[5] Specifically, Ms. Payton's treatment was conditioned upon her agreement to:
(continued)

Because of her continuing intolerable and dangerous behavior, Dr. Weaver sent his final notice to Ms. Payton terminating the patient-physician relationship in March, 1980. Again, regular outpatient dialysis ceased, and again Ms. Payton responded with legal proceedings attempting to force Dr. Weaver and BMA to resume treating her. From the outset of the proceedings Dr. Weaver and BMA vigorously asserted their rights under the Thirteenth Amendment, and their right to protect their other patients from this one. Before, during and after the evidentiary hearing, Petitioners repeatedly sought dismissal of respondent's action on the ground that any order compelling involuntary services was beyond the power of the court to grant. Over strenuous objection the trial judge ordered Dr. Weaver and BMA to provide care during the hearing.

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1) keep all appointments at their scheduled time;
2) refrain from all use of alcohol;
3) refrain from all use of drugs, except those prescribed by her physician;
4) maintain prescribed dietary habits;
5) in all respects cooperate with those providing her care and abide by her physician's prescribed medical regimen; and
6) enter into and participate in good faith in a program of regular psychotherapy and/or counselling.

(Appendix E, infra, p. 3)

Finally, after a four-day hearing, the trial court found no legal or equitable basis for compelling the service of Dr. Weaver or BMA.[6] (The complete Findings

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6 The trial court's Findings of Fact provided:

> 13. Ms. Payton's failure to meet the above conditions (of the stipulation) has constituted gross non-cooperation with her treating physician, BMA of Oakland and Providence Hospital. Further, during times that Petitioner has sought and received treatment at BMA of Oakland as an out-patient, at the emergency room of Providence Hospital when admitted by Dr. John C. Weaver, Jr., her conduct has been disruptive, abusive, and unreasonable such as to trespass upon the rights of other patients and to endanger their rights to full and adequate treatment; her use of profane and vulgar language, her exposure of herself has been an imposition on the nursing staff.
>
> 14. In the weighing of the rights and privileges of other patients at BMA of Oakland and Providence Hospital, the rights and equities of those other patients are superior to the claimed rights or equities of (Ms. Payton) under the facts shown herein. (Appendix E, infra, p. 6)

Based on the foregoing findings, the court concluded:

> 5. Upon weighing of the equities amongst the various parties involved, including other patients of the various health care providers, (Ms. Payton) has no legal right to compel medical service from any of the Respondents for chronic or regular care of her kidney

(continued)

of Fact and Conclusions of Law may be found at Appendix E, *infra*.) Judgment was entered accordingly. (Appendix D, *infra*)

Petitioners stress that no patient-physician relationship or other contract of employment existed at the time Ms. Payton brought her suit, and the trial court so concluded.[7] Further, the trial court found that Ms. Payton's condition did not constitute an emergency[8] and did not justify further imposition of an involuntary patient-physician relationship.[9] The court concluded that

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problems through dialysis. (Appendix E, infra, p. 9)

7 The trial court concluded:

8. Dr. John C. Weaver, Jr., has given sufficient notice to (Ms. Payton) and has discharged all obligations imposed by the patient-physician relationship with her. (Appendix E, infra, p. 10)

8 Specifically, the trial court found:

20. (Ms. Payton) suffers from end stage kidney disease which in and of itself is not an emergency condition. Although as a result of her condition, (Ms. Payton) requires chronic dialysis treatment, that need cannot be described as a need for emergency care within the context of Health & Safety Code section 1317 or otherwise. (Appendix E, infra, p. 8)

9 The conclusion of the trial court was that:

(continued)

neither Dr. Weaver nor BMA had any further obligation to Ms. Payton, and she was "not without means to arrange for her own care."[10]

D. The Post-Trial Order and Writs

In spite of the judgment and findings wholly in Petitioners' favor, the trial court subsequently and irregularly entered a post-trial order purportedly compelling Dr. Weaver and BMA to render care pending Ms. Payton's appeal of the judgment. In effect, therefore, after specifically concluding that it had no legal or equitable basis for granting such relief,[11] the trial court entered

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7. There is no present duty on the part of any respondent requiring any one of them to provide Petitioner with regular outpatient dialysis treatment.
(Appendix E, infra, p. 10)

10 The trial court found:

21. (Ms. Payton) has freedom of several choices available by which she can be kept away from dangerous drugs and alcohol, helped to stay on a proper dietary regimen and in all other ways caused to cooperate with those attempting to provide her with care. (Ms. Payton) therefore is not without means to arrange for her own care. (Appendix E, infra, p. 8)

11 The trial court concluded:

5. Upon weighing of the equities amongst the various parties involved, including other

(continued)

the equivalent of a mandatory injunction compelling Petitioners' services for the years it will take to resolve this appeal.

Dr. Weaver and BMA petitioned the California Court of Appeal for a Writ of Supersedeas, asserting Petitioners' rights under the Thirteenth Amendment, and the right to protect their patients. The Court of Appeal granted that writ without opinion on February 20, 1981. (Appendix B, *infra*) Ms. Payton then petitioned for hearing in the California Supreme Court. Without opinion, the California Supreme Court reversed the Court of Appeal and reinstated the trial court's order for ongoing care until the appeal is resolved.

The California Court of Appeal has informed the undersigned that it will not even hear oral argument on the appeal for at least two years, and probably more. During that time, Dr. Weaver and BMA, under penalty of imprisonment, must render personal services against their best medical judgment.

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patients of the various health care providers, (Ms. Payton) has no legal right to compel medical service from any of the Respondents for chronic or regulare care of her kidney problems through dialysis.
(Appendix E, infra, p. 9)

REASONS FOR GRANTING THE WRIT

I. This Case Raises Questions of National Public Concern as Well as Grave Issues Pertaining to the Protection of Constitutional Rights

The question raised by this case, "Can a patient compel a particular doctor and dialysis unit to render services to that patient against his or her will?", is of concern to all patients, physicians, and health care providers throughout the United States. This case has been the subject of wire service news stories as well as articles in the medical professional literature. Within the next 30 days, the American Union of Physicians and Dentists will file an amicus curiae brief, as will the Renal Physicians' Association (the professional society of nephrologists). Other amici curiae may join in expressing their concern over the impact of the California Supreme Court's order on the rendering of health care generally and its special effect on dialysis providers and patients.

Petitioners, however, come before this Court seeking protection of their individual constitutional right to be free from forced personal labor. Preservation of this right is of universal concern to all citizens. Could a state conscript an individual bricklayer, milkman or textile worker to perform personal services for a given employer? Could any of these conscriptees be required to work

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under conditions they deem intolerable, or for a master whom they find too difficult or dangerous to serve?

The California Supreme Court has entered such an order against Dr. Weaver and BMA personnel. Dr. Weaver's involuntary servitude is particularly burdensome: In effect, he must be on call twenty-four hours a day, 365 days a year, to respond to this particular patient's demands.

Although the Thirteenth Amendment does not require Petitioners to justify their desire to cease rendering services to this individual,[12] Petitioners demonstrated below by uncontradicted proof that the patient-physician relationship has irremediably broken down and that they can no longer effectively care for this patient. Petitioners showed, and the trial court found, that this patient disrupts the orderly treatment of other patients and jeopardizes their health. Ms. Payton herself admits and avers that she is a drug addict with emotional problems who will not adhere to her prescribed dietary or medical regimen and schedule. Accordingly, Petitioners

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12 One must be permitted to quit the personal employ of another for good reason, bad reason or no reason at all. *Laucks v. Star City Glass Co.*, 551 F.2d 745, 747 (7th Cir. 1977); *Sarkes Tarzian, Inc. v. Audio Devices, Inc.*, 166 F.Supp. 250, 267 (S.D. Cal. 1958), *aff'd.*, 283 F.2d 695, *cert den.*, 365 U.S. 869, 81 S.Ct. 903, 5 L.Ed. 2d 859.

are unable to render effective medical treatment to Ms. Payton.

The trial court found that Petitioners had met all of their legal and ethical obligations in discharging Ms. Payton as a patient. Specifically, the lower court found that Ms. Payton is not in an emergency condition, but instead is in need of chronic care, which she has alternative means of arranging.[13]

If the purpose of the California Supreme Court's order purportedly is to preserve the subject matter of the appeal, i.e., Ms. Payton's life, it is respectfully submitted that she has the primary responsibility for taking the

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[13] That finding, in itself, answers Ms. Payton's sole contention that she needs medical care to save her life. That care is available from sources other than BMA and Dr. Weaver. For example, if she entered a drug therapy program in a nearby county, it would arrange for her dialysis, or she could voluntarily petition the court to appoint a conservator whose sole function would be to arrange for her medical care. Cal. Wel. & Instit. Code sections 5357, 5358; Prob. Code sections 1800, 1801(d) (West 1972). Instead of filing such a voluntary petition, she has filed a lawsuit against a specified private individual physician and dialysis unit to impose on them the burden of providing her care. Even if voluntary alternatives were not available to Ms. Payton (and they certainly are), that would still not justify the state's coercion of involuntary personal service. If the state has an interest in securing care for Ms. Payton, it must satisfy that interest through established state institutions using state resources, and not unfairly conscript the unwilling personal services of private persons.

steps within her control to assure that she gets care. It is wholly antithetical to the concept of liberty that one individual in our society may ignore the voluntary alternative steps that he or she might take to protect his or her interests while imposing on other individuals insufferable conditions of involuntary servitude. Ms. Payton's preference for one particular doctor does not justify binding Dr. Weaver to her personal service, and could only be sanctioned in a state permitting slavery.

This case thus transcends the relationship of doctor to patient and goes to the heart of the relationship of the state to the individual. The highest court of California has singled out one physician and one dialysis unit, and has placed them in the involuntary service of a single individual for at least the next two years. Using its power of contempt, the court has directed Petitioners to render service or go to jail. Certiorari should be granted so that our courts will remain instruments of freedom, not shackles of bondage.

II. The California Supreme Court's Order Unconstitutionally Places Petitioners in Involuntary Servitude

With every passing day, Dr. Weaver and BMA personnel must suffer an egregious violation of their basic constitutional right to be free to choose for whom they work. Because of the California Supreme Court's order,

under pain of imprisonment, Petitioners may not quit the employ of Brenda Payton.

Without doubt, Petitioners find themselves bound in involuntary servitude:

> It would be an invasion of one's natural liberty to compel him to work for or to remain in the personal service of another. One who is placed under such constraint is in a condition of involuntary servitude,—a condition which the supreme law of the land declares shall not exist within the United States, or in any place subject to their jurisdiction.
> *Arthur* v. *Oakes*, 63 F. 310, 317-18 (7th Cir. 1894).

Though the Thirteenth Amendment was originally passed in order to assure that the newly-freed blacks were given their full freedoms of citizenship, its purpose and meaning are broader:

> The undoubted aim of the Thirteenth Amendment . . . was not merely to end slavery but to maintain a system of completely free and voluntary labor throughout the United States. . . .
> *Pollock* v. *Williams*, 322 U.S. 4, 17, 64 S.Ct. 792, 88 L.Ed. 1095 (1944).

The words "involuntary servitude" thus have a larger meaning than slavery:

> The plain intention was to abolish slavery of whatever name and form and all its badges

> and incidents; to render impossible any state of bondage; to make labor free, by prohibiting that control by which the personal service of one man is disposed of or coerced for another's benefit, which is the essence of involuntary servitude.
> *Bailey v. Alabama*, 219 U.S. 219, 241, 31 S.Ct. 145, 55 L.Ed. 191, 201 (1911).

Thus, courts have long recognized that freedom from compelled personal service is fundamental to the individual liberty constitutionally guaranteed to all citizens.

The Thirteenth Amendment was effectively used as a shield to protect individual freedom of labor in *Bailey v. Alabama*, 219 U.S. 219, 31 S.Ct. 145, 55 L.Ed. 191 (1911). In *Bailey*, an Alabama statute created a presumption of criminal fraud where a worker had contracted and was paid for work which he subsequently refused to perform. Under the statute, the threat of imprisonment served as a tool of coercing labor. Justice Hughes, in *Bailey*, observed that "the compulsion to such service by the fear of punishment under a criminal statute is more powerful than any guard which the employer could station." 219 U.S. at 244, 31 S.Ct. 145, 55 L.Ed. 191. The state may not "authorize its constabulary to prevent the servant from escaping." 219 U.S. at 244. Neither can it "punish the servant as a criminal for the mere failure or refusal to serve." *Id.*

Plainly, the State of California cannot hold Dr. Weaver to Brenda Payton's personal service under pain of

imprisonment for contempt of court. Yet, that is precisely what the California Supreme Court has ordered in this case: Without convicting Petitioners of any crime whatsoever, the California Supreme Court is using the threat of state imprisonment to force Dr. Weaver and BMA to render personal services involuntarily to Ms. Payton.[14]

The California order attempting to enforce Petitioners' "involuntary service or labor" is a nullity under 42 U.S.C. §1994. That statute specifically provides that "all . . . orders . . . of any . . . State," which attempt to enforce involuntary service "in liquidation of any debt or obligation *or otherwise* are declared null and void." Emphasis added. Although primarily aimed at the

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[14] This Court has universally drawn a distinction between *personal service*, required from one individual to another, and the right of the government to require *general duty* for the *general good*. Therefore, the issues presented herein involve no challenge, and have no relationship, to the validity of general requirements for "all able bodied" citizens to repair highways. *Butler v. Perry*, 240 U.S. 328, 36 S.Ct. 258, 60 L.Ed. 672 (1916), the constitutionality of draft laws, *Selective Draft Law Cases*, 245 U.S. 366, 38 S.Ct. 159, 62 L.Ed. 349 (1918), the validity of a tax on an employee's wages, *Abney v. Campbell*, 206 F.2d 836 (5th Cir. 1953), or similar general service requirements.

Rather, this Court consistently has noted *coerced personal service*—from one specified individual to another—is the evil addressed by the Thirteenth Amendment, and the condition which it puts beyond the power of any person—or court—to compel.

elimination of the effects of peonage, the purpose of the statute has been construed broadly to nullify any private or state act imposing involuntary service. In the *Peonage Cases*, 123 F.671, 675 (M.D. Ala., 1903), the court noted that the use of the word,

> '[o]therwise', in contradistinction to 'any debt or obligation' cannot mean less than that the . . . obligation upon which the claim to compulsory service is based need not be real or of legal validity, but includes cases when the 'obligation,' performance of which is coerced by labor against the will of the servitor, is unfounded, concocted, or illegal, or arises from agreements or dealings with strangers claiming the right to his service. . . .

Thus, under any guise or form whatsoever, the resulting evil of peonage—involuntary servitude—is outlawed by section 1994. *Id.* The congressional policy underlying the statute "means that no state can make the quitting of work any component of a crime, or make criminal sanctions available for holding unwilling persons to labor." *Pollock v. Williams*, 322 U.S. 4, 18, 64 S.Ct. 792, 88 L.Ed. 1095 (1944). Accordingly, any order attempting to do so is declared "null and void" under section 1994.

III. An Individual Must Be Free Not to Work Under Intolerable Conditions

The Constitution's prohibition against involuntary servitude prevents an intolerable evil in a free society—the inability of a worker to escape from another's service

regardless of how harsh the conditions may be. *Pollock* v. *Williams*, 322 U.S. 4, 64 S.Ct. 792, 88 L.Ed. 1095 (1944). Dr. Weaver and BMA are unable to quit their employment in spite of intolerable conditions. This relationship is not only oppressive to Petitioners, but dangerous to their other patients. In spite of Petitioners' uncontradicted showing of the burdens and dangers, Petitioners' plea to be relieved from this unworkable edict went unheeded by the California Supreme Court. Stripped of the protections guaranteed by the Thirteenth Amendment, Petitioners have no further recourse than this Petition:

> [I]n general the defense against oppressive hours, pay, working conditions, or treatment is the right to change employers. When the master can compel and the laborer cannot escape the obligation to go on, there is no power below to redress and no incentive above to relieve a harsh overlordship or unwholesome working conditions of work. *Pollock* v. *Williams*, 322 U.S. 4, 18, 64 S.Ct. 792, 88 L.Ed. 1095 (1944).

This Court is the court of last resort, the last place to which these Petitioners can turn to be released from their involuntary servitude under intolerable conditions.

IV. Certiorari Should Be Granted Because the California Supreme Court Order Is Shockingly Wrong, Violating the Fundamental Principle that Equity Will Not Specifically Enforce a Contract for Personal Services

The California Supreme Court not only has taken away Dr. Weaver's liberty, but it has substituted its own lay opinion for the physician's considered professional judgment in the interest of the safety of all his patients. It is uncontroverted that Ms. Payton is a disruptive and dangerous patient whose aberrant behavior affects the health and lives of other patients. Dr. Weaver, exercising his professional judgment and prerogatives, has a right and, indeed, an obligation to protect those other patients. *E.g.*, *Doe* v. *Bolton*, 410 U.S. 179, 93 S.Ct. 1410, 35 L.Ed 201 (1973); *Tarasoff* v. *Regents of the University of California*, 17 Cal. 3d 425, 551 P.2d 334, 131 Cal. Rptr. 14 (1976). When patients seek treatment from a physician or facility, they have a reasonable expectation that the physician or facility will not subject them to known danger from another patient. *Cf.*, *Tarasoff*, *supra*; *Jones* v. *U.S.*, 399 F.2d 936 (2d Cir. 1968); *Vistica* v. *Presbyterian Hosp.*, 67 Cal. 2d 465, 432 P.2d 193, 62 Cal. Rptr. 577 (1967). Yet, Ms. Payton's conduct consistently presents such a danger.

Under the California Supreme Court order, how can Dr. Weaver and BMA be expected to fulfill their professional obligations to provide safe health care to their

other patients? The effect of that order is to compel Dr. Weaver and BMA to treat Ms. Payton regardless of how extreme her behavior, and how dangerous she is. The order thus subjects Petitioners' patients involuntarily to a known risk.

Even in areas less sensitive than medical treatment, courts of equity have universally declined to use a mandatory injunction to enforce continued personal services. Courts decline to do so because they cannot act as the day-to-day supervisors of the employment relationship.[15] In *Arthur* v. *Oakes*, 63 F. 310 (7th Cir. 1894),

---

15 Petitioners' argument does not reach the power of the courts to appoint counsel, since "(a)ttorneys are officers of the court and are bound to render service when required by (court) appointment." *Powell v. Alabama*, 287 U.S. 45, 73, 77 L.Ed. 158, 172 (1932). Further, the courts can supervise the services of an attorney in a pending case. Thus, the law regarding court control over attorneys has no bearing on this case.

Yet, this Court has even limited the power to appoint counsel in cases involving "actual imprisonment", rather than the "mere threat" thereof. *Scott v. Illinois*, 440 U.S. 367, 373, 99 S.Ct. 1158, 59 L.Ed. 2d 383 (1979); and, in civil cases, the federal courts have noted the impact of the Thirteenth Amendment upon the Sixth Amendment right to counsel, holding that the courts have no more right to coerce the involuntary service of counsel in a matter they deem unmeritorious than they would have "to make an order compelling these defendants, had they not been convicted, to pick cotton for a private individual." *United States v. Leser*, 233 F.Supp. 535, 538 (S.D. Cal. 1964); *accord*, *Allison v. Wilson*, 277 F.Supp. 271 (N.D. Cal. 1967); *In the Matter of* (continued)

where the court overturned a mandatory injunction compelling railroad workers to work under a receivership, the Court stated the issue as follows:

> [W]hether a court of equity will, under any circumstances, by injunction, prevent one individual from quitting the personal service of another? An affirmative answer to this question is not, we think, justified by any authority to which our attention has been called or of which we are aware. . . . In *Powell Duffryn Steam-Coal Co. v. Taff Vale R. Co.*, 9 Ch. App. 331, 335, Lord Justice James observed that when what is required is not merely to restrain a party from doing an act of wrong, but to oblige him to do some continuous act involving labor and care, the court has never found its way to do this by injunction. In the same case Lord Justice Mellish stated the principle still more broadly, perhaps too broadly, when he said that a court can only order the doing of something which has to be done once for all, so that the court can see to its being done.
>
> The rule, we think, is without exception that equity will not compel the actual, affirmative performance by an employee of merely personal services. . . .
> 63 F. 310 at 317-318.

Thus, courts have long recognized the practical limitations on their ability to compel one person to render personal services to another. *Rutland Marble Co. v.*

Nine Applications for Appointment of Counsel in Title VII Proceedings, 475 F.Supp. 87 (N.D. Ala. 1979).

Ripley, 10 Wall. 339, 363, 19 L.Ed. 955, 961 (1870); *Texas & P. R. Co. v. City of Marshall*, 136 U.S. 393, 405, 34 L.Ed. 385, 390 (1890); *Lumley v. Wagner*, De G.M. & G. 604, 42 Eng. Rep. 687 (Ch. 1852); Restatement, Contracts, §379.

Ironically, the supervision needed in this case is not to assure the performance of the party rendering services, but to gain the cooperation of the party receiving the services. Dr. Weaver seeks to quit Brenda Payton's personal service because *he* cannot adequately supervise her to ensure her welfare and that of the other patients; how can the court supervise her when the on-site staff cannot adequately do so? In the absence of such supervision, the state should not interject the presence of a dangerous patient into a dialysis unit serving 30 or more patients in the same room at the same time. Accordingly, certiorari should be granted to enforce a prime rule of equity, and restore to BMA's patients their right to medical care supervised by physicians, rather than the court.

CONCLUSION

By any traditional test, the California Supreme Court has violated the basic rule of equity that ongoing personal services may not be compelled by mandatory injunction. The rationale for that rule (which is the inability of the court to supervise the involuntary

relationship) is best underscored by the dangers facing Petitioners' other patients—dangers that cannot be adequately controlled by Petitioners, let alone the court. For at least the next two years the treatment of patients at BMA will be threatened by their involuntary exposure to Ms. Payton's continuing misconduct. They will be subjected to that danger as long as the California courts replace Dr. Weaver as the final medical authority in BMA's dialysis unit.

The California Supreme Court, through its order, has also violated the heart of the Thirteenth Amendment by coercing personal services from one individual to another under threat of imprisonment. The California court has made the quitting of another's personal service, without more, an imprisonable offense. In doing so, it has created a small island of slavery in a country which has not seen slavery for over a century.

Petitioners' freedom must be restored.

DATED: June 8, 1981.

Respectfully submitted,

CHARLES F. BOND, II
Attorney for Petitioners

MARK I. SCHICKMAN
MARRS A. CRADDICK
Of Counsel

APPENDIX A

1st Civil No. 50094

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

PAYTON, Plaintiff, Respondent and Appellant

v.

WEAVER, JR., ET AL., Defendants, Appellants and Respondents.

Petition for hearing is granted, and the cause and defendants' petition for supersedeas are transferred to this court. The petition for writ of supersedeas is denied. The cause is re-transferred to the Court of Appeal, First District, Division One, for determination of the pending appeals. The order of the Alameda County Superior Court, dated June 30, 1980, shall remain in effect during the pendency of the appeals.

The motion for reconsideration of the temporary stay granted February 24, 1981 is denied. The motion to join Alameda County as a party to this proceeding is denied.

BIRD,
Chief Justice

TOBRINER,
Justice

MOSK,
Justice

RICHARDSON,
Justice,

NEWMAN,
Justice

Justice

Justice

Filed on March 11, 1981

APPENDIX B

Court of Appeal of the State of California

In And For The

First Appellate District

Division One

Brenda Marie Payton, Plntf,., Rspdt., and Applt.	)	No. 50094
vs.	)	Alameda Superior Court No. 520530-5
John C. Weaver, Jr., M.D., et al., Dfdnts., Applts., and Rspdts.	)	

BY THE COURT:

The petition for writ of supersedeas is granted. The effect of the order dated June 30, 1980, for stay of execution of judgment and continuation of temporary order in Alameda County Superior Court Action No. 520530-5 Payton v. Weaver, et al., is hereby stayed pending final determination of the appeal on file herein.

Dated February 20, 1981

Elkington, J. Acting P.J.

APPENDIX C

Wilson & Casey
Law Offices
927 Broadway
Oakland California 94612
(415) 465-6511

Attorney for Petitioner

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

BRENDA MARIE PAYTON, Petitioner, vs. JOHN C. WEAVER, M.D., PROVIDENCE HOSPITAL, HERRICK HOSPITAL, ALTA BATES HOSPITAL, BMA of OAKLAND, INC., AND DOES I through XX, inclusive, Respondents.	NO. 520530-5 ORDER FOR STAY OF EXECUTION OF JUDGMENT AND CONTINUATION OF TEMPORARY ORDER

This matter came on regularly for hearing before the above entitled Court of June 23, 1980, pursuant to Petitioner's Motion of Stay of Execution of Judgment and Continuation of Temporary Order made orally on June 18, 1980 and filed on June 23, 1980. WARREN B. WILSON and JOANNE F. CASEY appeared as attorneys for Petitioner, BRENDA MARIE PAYTON; Hanson, Bridgett, Marcus, Vlahos and Stromberg, by ROBERT RUSKY, appeared as attorney for Respondents ALTA BATES HOSPITAL and HERRICK HOSPITAL; Berry and Berry,

by JOHN H. DICKERSON, appeared as attorney for Respondents PROVIDENCE HOSPITAL; CHARLES BOND as attorney for Respondents, JOHN C. WEAVER, M.D. and BMA of OAKLAND, INC.

The Court considered Petitioner's motion and heard oral arguments on the matter from all parties and the cause was submitted for decision.

In making the following orders to preserve the status quo pending appeal, the Court has taken into consideration the gravity of the consequences to Petitioner of its order and also the possibility that Petitioner, without adequate medical treatment, could die before her appeal is perfected, thereby rendering the issues of the appeal nugatory.

Under the inherent power to exercise reasonable control over all proceedings connected with the litigation before it, vested in this Court under Code of Civil Procedure §187 and also under the scope of the trial court's authority as specifically ennunciated in City of Pasadena v. Superior Court, 157 Cal. 781 (1910), the Court makes the following orders:

1. That execution of its judgment and order dated June 30, 1980, is hereby stayed pending the perfection of Petitioner's appeal.

2. That the temporary order made by this Court on April 10, 1980 that Respondents JOHN C. WEAVER, M.D. and BMA of OAKLAND, INC. continue to provide hemo-

dialysis to Petitioner on a regular basis be continued pending Petitioner's appeal.

3. That Petitioner is to cooperate with Respondent JOHN C. WEAVER. M.D. and follow all of his orders and directions to the best of her ability to do so.

Dated: June 30 ,1980.

RICHARD BARTALINI
Judge of the Superior Court

APPENDIX D

HANSON, BRIDGETT, MARCUS,
VLAHOS & STROMBERG
STEPHEN B. PECK
333 Market Street, Suite 2300
San Francisco, California 94105
Telephone: (415) 777-3200

FILED
Jun 30, 1980
Rene C. Davidson,
County Clerk
By _____
Deputy

Attorneys for Respondents
ALTA BATES HOSPITAL and HERRICK HOSPITAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

BRENDA MARIE PAYTON,

Petitioner,

vs.

JOHN C. WEAVER, JR., M.D., PROVIDENCE HOSPITAL, HERRICK HOSPITAL, ALTA BATES HOSPITAL, BMA OF OAKLAND, INC., and DOES I through XX, inclusive,

Respondents.

NO. 520530-5

JUDGMENT DENYING PEREMPTORY WRIT OF MANDATE AND INJUNCTION

Entered In
Judgement Book
Book (Reel)
601 Pg 3
Jun 30 1980
Rene C. Davidson,
County Clerk

This matter came on regularly for hearing before the above-entitled court on April 10, 11 and 17, 1980, the Honorable Richard Bartalini, Judge Presiding, pursuant to the verified Petition, Amended Petition and Second Amended Petition of BRENDA MARIE PAYTON and the

alternative writ of mandate issued under the seal of this Court and served on respondents in the manner provided by law. Warren Wilson and Joanne Casey appeared as attorneys for Petitioner, BRENDA MARIE PAYTON; Hanson, Bridgett, Marcus, Vlahos & Stromberg, by Stephen B. Peck, appeared as attorneys for Respondents, ALTA BATES HOSPITAL and HERRICK HOSPITAL; Berry and Berry, by Phillip Berry appeared as attorneys for Respondent PROVIDENCE HOSPITAL; Charles Bond, Professional Law Corporation, by Charles Bond and Robin G. Pulich appeared as attorneys for Respondents BMA OF OAKLAND, INC., and DR. JOHN C. WEAVER, JR.

The record of the proceedings before the Honorable Richard Bartalini having been received into evidence and having been examined by the Court, the Respondents ALTA BATES HOSPITAL, HERRICK HOSPITAL and PROVIDENCE HOSPITAL having filed an answer to the Petition, Amended Petition and Second Amended Petition, each side having submitted memoranda of points and authorities in support of their respective contentions, fully argued the matter orally before this Court, and the Court having heard the testimony of BRENDA MARIE PAYTON, Ronald Reuss, Wayne Hardwick, M.D., Donald Block, M.D., James Rosen, M.D., JOHN C. WEAVER, JR., M.D., Leroy Lewis, Craig Dennis, M.D., Margaret Kelley, and Juanita Hill, the cause having been submitted for decision,

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Petitioner, BRENDA MARIE PAYTON, requests that a peremptory writ of mandate and a permanent injunction be issued herein against Respondents JOHN C. WEAVER, JR., M.D., PROVIDENCE HOSPITAL, HERRICK HOSPITAL, ALTA BATES HOSPITAL and BMA OF OAKLAND, INC. be and hereby are denied, for the reason that said Respondents are found to have no legal duty to provide, or to continue to provide, non-emergency regular hemodialysis treatements (sic) to Petitioner.

2. The alternative writs of mandate heretofore issued in this action be and hereby are discharged; and

3. Each side shall bear their own costs and attorneys' fees in this action.

DATED: Jun 30, 1980

_____
THE HONORABLE RICHARD BARTALINI

Judgment entered on _____, 19__, in the Judgment Book, Volume No. _____, Page _____.

_____, Clerk

By _____
Deputy Clerk

APPENDIX E

BERRY & BERRY
A Professional Corporation
1221 Broadway, Suite 1880
Oakland, California 94612
Telephone: (415) 835-8330

Attorney for Defendant
PROVIDENCE HOSPITAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

BRENDA MARIE PAYTON NO. 520530-5

Plaintiff,

v.

JOHN C. WEAVER, M.D., PROVIDENCE HOSPITAL, et al.

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come on for hearing and extensive oral and documentary evidence having been received and the matter having been argued and submitted for decision and good cause appearing therefore, it is hereby ordered, adjudged and decreed that:

PROCEDURAL MOTION

1. Petitioner's Motion to amend her pleadings for a fourth time by the addition of an Amended Second

Petition for Writ of Mandate or alternatively for Injunctive Relief to Conform to Proof is denied.

FINDINGS OF FACT

1. Providence Hospital of Oakland, Herrick Hospital and Alta Bates Hospital are separate and distinct corporate entities currently doing business in the County of Alameda as health care providers. John C. Weaver, Jr., M.D., is an individual duly licensed to practice medicine in the State of California and a fully qualified and experienced specialist in the field of nephrology. BMA of Oakland, Inc. is a separate corporation and medical care provider which operates and has operated an out-patient clinic housed in facilities of Providence Hospital.

2. Petitioner, Brenda Marie Payton, is an individual with a chronic kidney ailment requiring her to have periodic dialysis treatment. For approximately 5 years as a patient of Dr. Weaver and an out-patient of BMA of Oakland, Inc. she has received hemodialysis treatment. She also during this time has on occasion received peritoneal dialysis. Both forms of dialysis treatment purge the body fluids of poisons and toxic substances harmful to good health and life.

3. On several occasions during the 5 years that he has attempted to provide her with medical care, Dr. John C. Weaver, Jr. has had to advise Petitioner that he could no longer act as he doctor owing to her failure to follow

medical instructions and her disruptive and harmful activities which constitute a danger to herself and to other patients. Shortly prior to the original filing of the petition in this matter, Dr. John C. Weaver, Jr., gave notice of his intent to withdraw from the physician-patient relationship. A final letter to Petitioner was sent by Dr. Weaver on March 3, 1980 notifying her that he would no longer treat her after April 5, 1980.

4. As a result of the first Court hearing on the matter herein it was stipulated by Petitioner, Dr. John C. Weaver, Jr., BMA of Oakland, Inc. and Providence Hospital as follows:

> 1) The patient will keep all appointments at their schedule time;
> 2) The patient will refrain from all use of alcohol;
> 3) The patient will refrain from all use of drugs, except those prescribed by her physician;
> 4) The patient will maintain prescribed dietary habits; and
> 5) The patient will in all respects cooperate with those providing her care and abide by her physician's prescribed medical regimen.
>
> The obligations of this order are interdependent so that the obligation to render medical care is dependent upon the patient's compliance with the conditions of this order.
>
> During this interim period of sixty (60) days, the patient shall seek to make other arrangements for her medical care and Respondent Weaver shall cooperation (sic) in this process.

> Providence Hospital will accept Petitioner as a patient provided she is formally admitted by and under the care of a properly qualified member in good standing of its hospital staff and cooperates in good faith as a patient, giving due and reasonable consideration to the needs and rights of other patients.

This Stipulation was entered into following negotiations amongst attorneys for the parties affected. The Stipulation was made on or about May 4, 1979 and thereafter incorporated as a part of the Court's Order.

4*. Thereafter on or about July 10, 1979, Petitioner and Dr. John C. Weaver, Jr. and BMA of Oakland, Inc. and Providence Hospital reaffirmed the original Stipulation and added a sixth condition as follows:

> 6) The patient will enter into and participate in good faith in a program of regular psychotherapy and/or counselling.

This affirmation and additional condition was entered into following negotiations amongst attorneys for the parties affected. On or about July 10, 1979 and thereafter incorporated as a part of a Court Order.

6. On numerous occasions from May 4, 1979 up to the date hearing on this matter Petitioner failed and

---

* Numbered as in original.

neglected to keep appointments with Dr. Weaver and BMA of Oakland at their scheduled times.

7. On numerous occasions from May 4, 1979 up to the date of hearing on this matter Petitioner failed and neglected to refrain from use of drugs except those prescribed by her physician, but, on the contrary, sought out and bought barbituates through illegal purchases on the street from drug pushers and used these drugs to the detriment of her health. In purchasing and using such drugs Petitioner knew that she was acting contrary to the interests of her health.

*

9. On numerous occasions from May 4, 1979 up to the date of hearing on this matter Petitioner failed and neglected to maintain prescribed dietary habits.

10. On numerous occasions from May 4, 1979 up to the date of hearing on this matter Petitioner failed and neglected to cooperate with those providing her care and failed and neglected to abide by her physician's prescribed medical regimen.

11. On numerous occasions from July 10, 1979 up to the date of hearing on this matter Petitioner failed to participate regularly and in good faith in a program of psychotherapy and/or counselling, but on the contrary, voluntarily terminated such programs.

---

* Numbered as in original; no material deleted.

12. Petitioner was aware of each and all of the conditions to be met by her in the above stipulations and was aware of her failure to meet such conditions. Petitioner's failure to meet those conditions was and has been knowingly and intentional on her part.

13. Petitioner's failure to meet the above conditions has constituted gross non-cooperation with her treating physician, BMA of Oakland and Providence Hospital. Further, during times that Petitioner has sought and received treatment at BMA of Oakland as an out-patient, at the emergency room of Providence Hospital when admitted by Dr. John C. Weaver, Jr., her conduct has been disruptive, abusive, and unreasonable such as to trespass upon the rights of other patients and to endanger their rights to full and adequate treatment; her use of profane and vulgar language, her exposure of herself has been an imposition on the nursing staff.

14. In the weighing of the rights and privileges of other patients at BMA of Oakland and Providence Hospital, the rights and equities of those other patients are superior to the claimed rights or equities of Petitioner under the facts shown herein.

15. Petitioner has not been discriminated against on the basis of race or lifestyle or at all. Petitioner has not been refused dialysis by any named Respondent on the basis of any activity on the part of Respondent Dr. Weaver, Jr. or Respondent BMA of Oakland.

16. In late 1978, Petitioner applied for admission into the regular out-patient hemodialysis program at Alta Bates Hospital. Alta Bates Hospital denied Petitioner's application for admissions to its regular out-patient program for reasons other than her race or indigency or the activity of Respondent Dr. Weaver or Respondent BMA of Oakland. At the time of Petitioner's application for admission and Alta Bates Hospital's denial thereof, Petitioner was not in an emergency condition. Since her application for admission and Alta Bates Hospital's denial thereof, Petitioner has had no further contacts with Alta Bates Hospital and has never received hemodialysis treatments at Alta Bates Hospital.

17. In late 1978, Petitioner applied for admission into the regular out-patient hemodialysis program at Herrick Hospital. Herrick Hospital denied Petitioner's application for admission to its regular out-patient program for reasons other than her race or indigency or the activity of Respondent Dr. Weaver or Respondent BMA of Oakland. At the time of Petitioner's application for admission and Herrick Hospital's denial thereof, Petitioner was not in an emergency condition. Since her application for admission and Herrick Hospital's denial thereof, Petitioner has had no further contacts with Herrick Hospital and has never received hemodialysis treatments at Herrick Hospital.

18. A patient, like Petitioner, with end stage renal disease, will not become a medical emergency if that

person obeys medical orders, avoids drug abuse and appears for and has regularly scheduled hemodialysis treatments.

19. Regular out-patient dialysis treatment of chronic kidney patients requires expertise and equipment not normally found in emergency rooms.

20. Petitioner suffers from end stage kidney disease which in and of itself is not an emergency condition. Although, as a result of her condition, Petitioner requires chronic dialysis treatment, that need cannot be described as a need for emergency care within the context of Health and Safety Code §1317 or otherwise.

21. Petitioner has freedom of several choices available by which she can be kept away from dangerous drugs and alcohol, helped to stay on a proper dietary regimen and in all other ways caused to cooperate with those attempting to provide her with care. Petitioner therefore is not without means to arrange for her own care.

22. It is neither reasonable nor necessary to require any of the defendants to provide Petitioner with hemodialysis on a regular out-patient or in-patient basis while Petitioner exercises complete freedom to indulge in the use of dangerous drugs, alcohol and the other excesses. (Although apparently without any personal control).

CONCLUSIONS OF LAW

1. Petitioner at this stage is not entitled to amend her pleadings to conform to proof.

2. Petitioner by frequent violations of the conditions of stipulations and orders herein is estopped to claim any further relief under the pleadings. By themselves said stipulations and orders do not, however, constitute a final determination and adjudication of the rights, duties and responsibilities of the parties. The findings of facts and conclusions of law herein constitute a final determination and adjudication of the rights, duties, and responsibilities of the parties.

3. Petitioner has no absolute right to dialysis treatment under the Hill-Burton Act (41 USC §291 et seq.) or any of the administrative regulations thereunder from any Respondent. Under said Act and regulations, the hospitals and BMA of Oakland are free to determine eligibility for services, insofar as treatment is reasonably refused and due process has been afforded and a reasonable volume of services is afforded to indigents. The Court finds no violation of either the Hill-Burton Act or the Civil Rights Act (42 USC §2000d et seq.) herein.

4. Petitioner has not been discriminated against on the basis of race, lifestyle or at all.

5. Upon weighing of the equities amongst the various parties involved, including other patients of the various health care providers, Petitioner has no legal

right to compel medical service from any of the Respondents for chronic or regular care of her kidney problems through dialysis.

6. Should Petitioner present herself at any emergency department of any of the Respondent health care providers claiming a need to emergency care, a determination shall be made at that time by qualified physicians to see whether her condition constitutes an emergency and she is therefore entitled to medical services within the terms of §1317 of the Health and Safety Code.

7. There is no present duty on the part of any Respondent requiring any one of them to provide Petitioner with regular out-patient dialysis treatment.

8. Dr. John C. Weaver, Jr. has given sufficient notice to Petitioner and has discharged all obligations imposed by the patient-physician relationship with Petitioner.

9. Respondent John C. Weaver, Jr., M.D. is discharged from any further obligation to provide medical care to Petitioner unless he shall voluntarily accept such obligation in the future.

10. Respondent BMA of Oakland, Inc. is discharged from any further obligation to provide medical care to Petitioner unless it shall voluntarily accept such obligation in the future.

11. Respondent Providence Hospital is discharged from any further obligation to provide medical care to

Petitioner unless it shall voluntarily accept such obligation in the future.

12. None of the Respondent hospitals is required to provide to Petitioner as part of its emergency treatment hemodialysis on a regular out-patient basis.

13. Petitioner shall take nothing by reason of her "Petition for Writ of Mandate", "Amended Petition for Writ of Mandate", "Second Petition for Writ of Mandate", or any other pleading herein. Petitioner's Request for Mandatory Injunction is denied.

14. Neither Alta Bates Hospital nor Herrick Hospital have violated the Hill-Burton Act (42 USC §291, et seq.), the Civil Rights Act (42 USC §2000d, et seq.), or Health and Safety Code §1317 in denying Petitioner regular out-patient hemodialysis treatments.

DATED: June 19, 1980

_____

Judge of the Superior Court

APPENDIX F

42 U.S.C. Section 1994.

The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of any Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void.